

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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(Small Business/Self-Employed)

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subject: Statute extension consent signature

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether a partnership that became a disregarded entity when one partner became an employee must use the former partnership's EIN if it files its employment tax returns under the former partnership's name.
2. Whether Exam should treat all business activity after the former partnership became a disregarded entity as the sole proprietorship of Partner A, to be reported on Schedule C.
3. Whether Exam should treat returns filed under the former partnership's name and EIN as filed under the sole proprietorship's owner's SSN for statute purposes.
4. Who should sign the statute extensions, and in what capacity?
5. To whom should notices ultimately be issued?

FACTS

The partnership consisted of two partners, Partner A and Partner B. Partner A and Partner B executed a phased buyout plan whereby Partner B was bought out by Partner A and Partner B became the at-will employee of Partner A. The former partnership additionally had other employees during the years at issue.

The partnership terminated when Partner B became an employee, because Partner A was now the only remaining partner. Notwithstanding the termination of the partnership under state law, Partner A continued to file employment tax returns under the former partnership's name and EIN. Additionally, notwithstanding the contract stating that Partner B was now an at-will employee, Partner B received K-1s, not W-2s.

Exam now needs to secure statute extensions for the employment tax periods at issue. Exam also needs to issue a notice of determination concerning worker classification to reclassify Partner B as an employee.

LAW AND ANALYSIS

1. Whether a former partnership that became a disregarded entity when one partner became an employee must use the former partnership's EIN if it files its employment tax returns under the former partnership's name.

Yes, the former partnership's employment tax returns were correctly filed under the former partnership's old EIN. The partnership became a disregarded entity when its membership was reduced to one member, at which time the partnership ceased to exist. Rev. Rul. 2001-61 provides that, when a partnership becomes a disregarded entity, and if the disregarded entity chooses to calculate, report, and pay its employment tax obligations under its own name and EIN pursuant to Notice 99-6, the disregarded entity "must retain the same EIN for employment tax purposes it used as a partnership." (For all federal tax purposes other than employment obligations or except as otherwise provided in regulations or other guidance, a disregarded entity must use the TIN of its owner.)

Though Notice 99-6 was obsoleted by T.D. 9356, that T.D. also provides that the disregarded entity reports its employment tax obligations, not the owner. See Treas. Reg. § 301.7701-2(c)(2)(iv)(B).

Thus, because the employment tax returns were filed under the former partnership's old EIN, they were proper.

2. Whether Exam should treat all business activity after the partnership became a disregarded entity as the sole proprietorship of Partner A, to be reported on Schedule C.

Yes, except with respect to employment tax or excise tax, as described above. But it could be the case that the former partnership passed through Partner A's share of the

business's income to Partner A as self-employment income. (Section 736 provides rules governing retiring partners that may apply to Partner A.) If self-employment income was passed through to Partner A and Partner A reported self-employment tax on that income, the government may not have received less employment tax than is due.

3. Whether Exam should treat returns filed under the former partnership's name and EIN as filed under the sole proprietorship's owner's SSN for statute purposes.

The former partnership's employment tax returns should have been filed under the former partnership's old EIN, not Partner A's SSN. Because the employment tax returns were valid, Exam will need to obtain statute extensions.

4. Who should sign the statute extensions, and in what capacity?

Partner A should sign the statute extension consent in his capacity as the owner of the disregarded entity.

5. To whom should notices ultimately be issued?

Notices should be issued to Partner A as the owner of the disregarded entity because the partnership ceased to exist when its membership was reduced to one member.

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Please call if you have any further questions.